IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1289 OF 2004

IN

SUIT NO.1674 OF 2002

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Makalu Trading (P) Ltd. ...Plaintiff

v/s.

Meridien Steels Pvt.Ltd. ...Defendant

...

Mr.Pankaj Parshurampuria for the Plaintiff.

Mr.B.B.Saraf i/b T.N.Tripathi for the Defendant No.1.

...

CORAM: D.K.DESHMUKH, J.

DATED: 18TH FEBRUARY,2005

P.C.:

1. This Notice of Motion is taken out by the Defendant No.1 for setting aside the exparte decree passed in the summary suit.

2. The defence of the Defendant No.1 is that the writ of summons was not served on the Defendant No.1. Defendant No.1 is a company incorporated under the Companies Act. There is no dispute that the address which is shown in the plaint is the registered address of the Defendant No.1/company. It is clear from the affidavit of service of the bailiff that the envelope was left at the registered address of the company and was accepted in that office by one Ms.Ujwala Satam. It is claimed in the affidavit filed in support of the motion that Ms.Ujwala Satam was not an employee of the Defendant No.1/company. Even assuming that is so, fact remains that the envelope was left at the office of the Defendant No.1. It is further to be seen here that writ of summons was also served on the Defendant No.5, who

was the Director of the Defendant No.1/company. Therefore, it is absolutely clear that the Defendant No.1 had knowledge of the suit, still the Defendant No.1 did not appear.

2. Despite this position, I put it to the learned Counsel appearing for the Defendant No.1 that though it appears from the record that the Defendant No.1 was duly served, if the Defendant No.1 deposits the amount of principal in the court, then in order to grant an opportunity of being heard to the Defendant No.1, a question of setting aside the decree can be considered.

3. The learned Counsel appearing for the Defendant No.1 expressed inability of the Defendant No.1 to deposit even the amount of principal.

4. Taking overall view of the matter, therefore, it appears that the present Notice of Motion has been taken out merely to prolong or delay the execution of the decree, which has been passed. Notice of Motion is, therefore, disposed of.

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